

statement to a group of school children. It is possible that she told the school children not to commit crime, not to do drugs and not to be involved with drugs and that if they did they would likely be caught, tried and sent to jail. To drive home the deterrence point that they should not think that they can get away with anything, I can imagine the Judge directing the children's attention toward the officers dressed in their street clothes to make the point that officers do not always wear their uniforms and badges and that they could be anyone. One of the officers had already testified and identified himself as a police officer in open court. He was called "Officer" by the prosecutor. The transcript of that case indicates that the other officer was there and had been named in the course of the proceedings. The Commonwealth rested its case without formally calling the second officer to the stand.

I also note that neither of the officers' written statements indicate that the Judge said anything disparaging. Nowhere is there any basis for the contention that she "ordered undercover police officers to stand up and be recognized in court" or "make undercover officers reveal who they are to the drug-running community." Neither of the officer's statements indicate that she referred to the men as "undercover narcotics officers" or "undercover officers." Those characterizations only surface later in assertions by a prosecutor who was seeking to have the Judge recuse herself the next year in a different case and in that prosecutor's later comments to a Philadelphia Daily News staff writer.

The officers' written statements indicate that they have little more in the way of specific personal recollection of these matters than Judge Massiah-Jackson does. The written statements conflict with each other and with the subsequent newspaper account. Many of the specifics about the proceedings are simply incorrect.

It seems to this Senator that some have been intent to make this alleged incident into something it was not. To the extent Judge Massiah-Jackson made any reference to the presence of officers dressed in street clothes in the courtroom, it appears to me that it was after the officers had identified themselves to those present as officers. They do not appear to have been acting as undercover officers in the courtroom and were not unmasked. From the testimony offered in the case they both had been in contact with both defendants. To the extent the Judge made any comments, they were most likely directed at a group of school children visiting the courtroom and were made in the course of a speech urging those children to stay away from crime and drugs.

The Judge has long been involved with young people, often spent time as a classroom speaker, visited a number of Philadelphia's public and parochial schools and invited classes to visit her

courtroom. Indeed, she visited an impressive array of schools to make presentations every year since joining the bench.

I trust that we will hear no more about the allegation that she unmasked undercover officers in her courtroom. I regret that the reputation of this Judge has been clouded. I hope that those who want to know the truth will consult the record made in connection with the March 11 Judiciary Committee hearing and the court records in the cases at issue.

In her letter to the President, Judge Massiah-Jackson noted that "our system of justice and the independence of this third branch of our government may be the most precious treasure bequeathed to us by the Founding Fathers." I hope that in the future the Senate will show more respect for the independence of the judiciary and a more balanced approach in our review of judicial nominations.

EXECUTIVE SESSION

NOMINATION OF JEREMY D. FOGEL, OF CALIFORNIA, TO BE UNITED STATES DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF CALIFORNIA

The PRESIDING OFFICER. The clerk will report the nomination.

The assistant legislative clerk read the nomination of Jeremy D. Fogel, of California, to be United States District Judge for the Northern District of California.

Mr. LEAHY. What is the parliamentary situation?

The PRESIDING OFFICER. There will be 10 minutes of debate evenly divided.

Mr. LEAHY. Mr. President, today there are 82 vacancies among the Federal judiciary. We can see another 15 vacancies on the horizon. If we confirm Jeremy Fogel to the U.S. District Court for the Northern District of California in a vote this evening, then we will have confirmed 11 judges so far this year. That is less than four a month. When you know that you have close to 100 vacancies, 4 a month doesn't cut it. The President spoke to this issue; the Chief Justice spoke to it. The Senate can do a better job.

At the end of last year the Senate was confirming on average three judges a week. In response to the plea by the Chief Justice in the 1997 Year End Report, the Senate can and should do better this year.

Some still resist acknowledging the judicial vacancies crisis and contend that there are plenty of Federal Judges to handle the work of the courts and criticize the Judges for expanding their own jurisdiction. That is certainly not the case among the Federal Judges I know or the Federal Courts with which I am familiar.

We should not perpetuate circumstances that require Chief Judges

to impose so heavily on senior judges and visiting judges. That is why I introduced the judgeship bill recommended by the Judicial Conference that calls for creating 55 additional judges. Moreover, it appears to me that it is the Congress of the United States that has been expanding Federal Court jurisdiction and role—and may do so again if the Republican leadership has its way and passes its version of the juvenile crime bill and its takings bill.

There is a need—in a growing number of cases, the desperate need—to fill the almost 100 vacancies that continue to plague the federal justice system. The President has spoken to the issue both last September and in his most recent State of the Union. The Chief Justice spoke to the matter again in the 1997 Year End Report. I have spoken until I am blue in the face. The Senate can do a better job to fulfill its constitutional responsibility and to support the third co-equal branch of our government.

As the Chief Justice has pointed out, confirmations are taking longer and longer to the detriment of greater numbers of Americans and the national cause of prompt justice. I fear that the current delays will persist until each of you, concerned judges from around the country, begins to express outrage at the slowdown on judicial confirmations. Rather than have the Senate persist in efforts to micro manage the judiciary and attack its independence and integrity, I am seeking to have the Senate get on about the business of confirming judges and provided the resources courts need.

Today 7 judicial nominees are listed on the Senate calendar. Unlike earlier days in the Senate when nominees were not made to wait for weeks and months on the Senate calendar before they could be considered, that is now becoming the rule.

I calculate that the average number of days for those few lucky nominees who are finally confirmed is continuing to escalate. In 1994 and 1995 judicial nominees took on average 86 or 87 days from nomination to confirmation. In 1996, that number rose to a record 183 days on average. Last year, that number rose dramatically yet again. From initial nomination to confirmation, the average time it took for Senate action on the 36 judges confirmed in 1997 was 206 days.

During the entire four years of the Bush Administration there were only three judicial nominations that were pending before the Senate for as long as 9 months before being confirmed and none took as long as a year. In 1997 alone there were 10 judicial nominations that took more than 9 months before a final favorably vote and 9 of those 10 extended over a year to a year and one-half. Of the 10 judges confirmed so far this year, Margaret Morrow took 21 months, Ann Aiken took 26 months, and Hilda Tagle took 31 months.

Last year the President sent us 79 judicial nominations but the Senate